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■ A C.I.A.-A.C.L.U. DEAL?

The Operational Files Exemption

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The American Civil Liberties Union, the Central Intelligence Agency and Senate Intelligence Committee chairman Barry Goldwater have become strange bedfellows in the latest effort to exempt the agency from the Freedom of Information Act—Senate bill 1324. Although the A.C.L.U., the C.I.A. and the senators will be nit-picking over the language of the bill during the markup sessions, which begin in the coming weeks, they have already agreed on its key provision, which exempts the agency's "operational files" from F.O.I.A. search and disclosure requirements.

S. 1324 is a revision of a bill proposed in 1979 by then-C.I.A. Deputy Director Frank C. Carlucci, which the A.C.L.U. opposed at the time. The new version was drawn up by the C.I.A.'s legal representatives in cooperation with Senator Goldwater. It was introduced in Congress after the A.C.L.U. informally agreed to the operational-files exemption.

The A.C.L.U. and the C.I.A. claim that the exemption would not expand the C.I.A.'s authority to withhold documents. Under the F.O.I.A., the agency may deny requests for information that relates to national security matters or that reveals confidential sources and investigative techniques. They contend that since operational files invariably contain such information, they are never released. Freeing the agency of the requirement that it conduct time-consuming searches of files that are never released, proponents say, would enable it to process other F.O.I.A. requests more expeditiously.

Critics of the proposed legislation counter that the term "operational files" is so broadly defined that it will amount to a total exemption from the F.O.I.A., permitting the agency to cover up illegal domestic spying and other wrongdoing. Many information act experts say the C.I.A. has taken the A.C.L.U. for a ride.

The deal between the C.I.A. and the A.C.L.U. was initially discussed in informal conversations between the agency's Deputy Counsel, Ernest Mayerfeld, and A.C.L.U. attorney Mark H. Lynch, who have been friendly enemies in F.O.I.A. court battles for seven years. As Lynch put it, "We're two guys who've spent a lot of time in court

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will not ever again be a repeat of the improprieties of the past," he said. "And let me assure you that Bill Casey and I consider it our paramount responsibility that the rules and regulations not be violated."

Leaving aside the C.I.A.'s assurances that it will speed up the release of information, what does the bill itself say? The heart of the proposed legislation is the definition of "operational files." The agency and the A.C.L.U. agree that if the bill is passed, such files will no longer be subject to the search process—that they will be, in short, exempt from the F.O.I.A. But they disagree substantially over just what operational files are.

Mayerfeld told me that operational files deal with foreign intelligence, counterintelligence and counterterrorism operations; investigations to determine the suitability of potential foreign intelligence sources; "security liaison arrangements" with other intelligence agencies; and information exchanges with foreign governments. Mayerfeld's definition covers most of the agency's business, except—perhaps—intelligence reports derived from operational files. I say "perhaps" because some critics of the bill believe that even those reports could be exempt under the proposed legislation.

Let us examine some of Mayerfeld's categories. Take "counterintelligence operations," for example. Those operations include C.I.A. domestic spying, which President Reagan authorized in his executive order of December 4, 1981. If the Senate bill is passed, files on domestic spying could presumably be exempt from F.O.I.A. inquiries.

Files relating to past counterintelligence operations like Operation Chaos, which spied on the antiwar and civil rights movements and the underground press between 1967 and 1974, might also be exempt. Some of the activities carried out under Operation Chaos were revealed in 1976 by Senator Frank Church's Select Committee on Intelligence. And stories about the operation based on information obtained under the F.O.I.A. have appeared in the press. But the complete account has not emerged, and a C.I.A. source told my attorney that the agency has two roomfuls of unreleased Chaos files.

Opinion is divided on whether that material would be exempt under the Senate bill. Lynch told me the documents could be made public since Operation Chaos was the subject of a Congressional investigation and the House version of

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Angus Mackenzie is an associate of the Center for Investigative Reporting, where he directs the Freedom of Information Project, which is co-sponsored by the Media Alliance.